

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

WALTER HALL

PLAINTIFF

VS.

CIVIL ACTION NO.: 4:20-cv-00009-NBB-JMV

CABLE ONE, INC.

DEFENDANT

ORDER

This matter is before the court on defendant's [18] Motion to Compel. The court finds that the motion is well taken, in part, and without merit otherwise. It is granted, in part, as follows:

Background

Defendant filed its Motion to Compel [18] pursuant to Rule 37(a) seeking responses to its first request for production of documents and first set of interrogatories propounded on April 7, 2020. As sanctions, defendant requests that the court dismiss plaintiff's complaint for want of prosecution, pursuant to Rule 37(d)(3). Further, should the court not award the sanction of dismissal, defendant requests: that the court extend the discovery deadline by one month, to and including October 4, 2020, for the sole purpose of allowing defendant to depose the plaintiff with adequate time to review plaintiff's discovery responses; attorneys' fees and costs; and such further relief as this court deems appropriate. Doc #18.

Defendant has submitted the required Rule 37(a)(1) certification that the movant has in good faith conferred with the plaintiff in an effort to obtain the requested discovery without court action. Doc. #18-3. In particular, defendant has outlined plaintiff's counsel's multiple and inexcusable failures, over several months, to provide the requested discovery responses despite plaintiff's counsel's repeated assurances to the contrary.

Plaintiff has responded to the motion informing the court that he “does not oppose the specific relief requested in the defendant’s motion to compel, including an order compelling production of the overdue discovery responses and extending the discovery deadline. The plaintiff requests the Court to grant him at least five days to produce the discovery responses and asks the Court not to impose sanctions requested by the defendant.” Doc. #19.

No reply was filed.

Law and Analysis

Federal Rule of Civil Procedure 37(d)(1) provides, in relevant part, “[o]n notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.... if:... (iii) a party fails to answer an interrogatory... or (iv) a party fails to produce documents....” Upon a successful motion to compel, reasonable expenses and attorney’s fees *must* be imposed, and the court *may* impose sanctions further sanctions. Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Civ. P. 37(d)(3).

In the instant case, the court finds that that the motion to compel is meritorious and therefore an award of expenses, including fees, are mandatory pursuant to Rule 37. The expenses, including fees, are assessed against plaintiff and his counsel jointly and severally. The court declines to award further sanctions, including a recommendation of dismissal.

Further, the plaintiff shall have no more than two (2) business days from the below date to *fully* provide responses to defendant’s discovery. All objections to the discovery are deemed waived. The court hereby also grants defendant until and including October 4, 2020, to depose the plaintiff.

Finally, defendant is instructed to submit its itemized fees and expenses incurred in filing the instant motion to the court and counsel opposite within five (5) business days hereof. Counsel

for plaintiff shall have five (5) business days after submission to make any objections to the reasonableness thereof.

SO ORDERED this, the 24th day of September, 2020.

/s/ Jane M. Virden

UNITED STATES MAGISTRATE JUDGE